

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 1, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re S. Kechri and CO G.P. with
the distinctive title Doriki Potopoia*

—
Serial No. 79310949

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Charles P. Guarino of Moser Taboada for S. KECHRI AND CO G.P. with the
distinctive title DORIKI POTOPOIIA.

Joseph Bertrand, Trademark Examining Attorney, Law Office 111,
Chris Doninger, Managing Attorney.

—
Before Lykos, Lynch and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, S. KECHRI AND CO G.P. with the distinctive title DORIKI
POTOPOIIA, a Greek company, filed an application to register the standard-
character mark KECHRIBARI on the Principal Register for “wines” in International
Class 33.¹ The application includes a voluntary statement by Applicant that

¹ Application Serial No. 79310949. The application was filed on February 5, 2021, under
Section 66(a) of the Trademark Act, 15 U.S.C. 1141f, as a request for extension of protection
of International Registration No. 1591456 pursuant to Madrid Protocol, 15 U.S.C. § 1141f.

KECHRIBARI translates to English as “amber.”

The Trademark Examining Attorney refused registration of KECHRIBARI under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of wines and therefore is not registrable on the Principal Register without a showing of acquired distinctiveness.

After the refusal was made final, Applicant requested reconsideration, which was subsequently denied; and filed an appeal, which has been briefed. For the reasons discussed below, we affirm the refusal to register.

I. Preliminary Issue

Before considering the merits of the refusal in this case, we address a procedural matter. Applicant, though represented by legal counsel, attached the entire record of prosecution (i.e., the application, Office actions, Office action responses, and the evidence attached thereto) as an exhibit to its appeal brief, which is improper. Because the file of an appealed application is automatically of record, Applicant’s submission was not only unnecessary, but had the effect of doubling the size of the materials the Board must review. *See In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012) (no need to attach additional copies to appeal brief of materials already of record), *aff’d*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013); *In re SL&E Training Stable Inc.*, 88 USPQ2d 1216, 1220 n.9 (TTAB 2008) (attaching exhibits to brief of material already of record only adds to the bulk of the file). The Board does not want or need multiple copies of the evidence, nor will it refer to evidence attached to briefs when considering or discussing the evidence.

To make matters worse, Applicant, in its brief, only cites to evidence by referring to pages that it attached to the brief, and not to the record itself, leaving the Board to rummage through the record to find the evidence and verify Applicant's contentions. "When referring to the record, the applicant and examining attorney should cite to the prosecution history for the application, currently the TSDR database," and "[c]itation format should be by date, name of the paper under which the evidence was submitted and the page number in the electronic record, for example: November 4, 2013 Office Action, TSDR p. 2." TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1203.01 (2023).

II. Mere Descriptiveness

In the absence of a showing of acquired distinctiveness, Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, ... when used on or in connection with the goods of the applicant is merely descriptive ... of them." 15 U.S.C. § 1052(e)(1). A term is "merely descriptive" within the meaning of Section 2(e)(1) if it "immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)).

"On the other hand, a mark is not descriptive, but is instead 'suggestive,' if it 'requires imagination, thought and perception to reach a conclusion' about the nature of the goods" *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 2021 USPQ2d 1069, at *12 (Fed. Cir. 2021) (quoting *DuoProSS Meditech Corp. v.*

Inviro Med. Devices, Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

Whether a mark is merely descriptive is determined in relation to the goods or services for which registration is sought, not in the abstract or on the basis of guesswork. Descriptiveness must be evaluated “in relation to the particular goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). In other words, we evaluate whether someone who knows what the goods and services are will understand the mark to convey information about them. *DuoProSS Meditech Corp.* 103 USPQ2d at 1757; *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

In cases involving foreign words, such as the one before us, an examining attorney may apply the doctrine of foreign equivalents in assessing descriptiveness. Under this doctrine, foreign words from common modern languages are translated into English to determine similarity of connotation with English word marks. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005). In descriptiveness cases:

It is a well[-]established principle of trademark law in this country that the foreign equivalent of a merely descriptive English word is no more registrable than the English word itself despite the fact that the foreign term may not be commonly known to the general public. That is, normally no distinction can be made between English terms and their foreign equivalents with respect to registrability. Foreign language

words, not adopted into the English language, which are descriptive of a product, are so considered in registration proceedings despite the fact that the words may be meaningless to the public generally.

In re S. Malhotra & Co. AG, 128 USPQ2d 1100, 1102 (TTAB 2018) (quoting *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270 (TTAB 2016)) (internal citations and quotations omitted).

The doctrine of foreign equivalents, however, should not be applied “mechanically.” *In re Isabella Fiore, LLC*, 75 USPQ2d 1564, 1569 (TTAB 2005). It should only be applied when: (1) the relevant English translation is direct and literal and there is no contradictory evidence establishing another relevant meaning, *In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1485 (TTAB 2012); and (2) “it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’” *Palm Bay*, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)). The “ordinary American purchaser” includes “all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009).

A. Evidence and Argument

The Examining Attorney relies on the doctrine of foreign equivalents to argue that KECHRIBARI is merely descriptive of wines. Specifically, he contends that KECHRIBARI translates from Greek to English as ‘amber,’ which is “a key color

and/or type of the goods in question, namely ‘wines.’² “In this case,” he argues, “the ordinary American purchaser would likely stop and translate the mark because the Greek language is a common, modern language spoken by an appreciable number of consumers in the United States. Specifically,” he asserts, “because over 350,000 residents of the United States speak Greek, the Greek language cannot be considered a dead or obscure language.”³

As support for his argument, the Examining Attorney relies on Applicant’s statement in the application that the English translation of KECHRIBARI is “amber.”⁴In addition, the Examining Attorney provided pages from several wine review blogs, each indicating that “Kechribari” is Greek for “amber,”⁵ as well as the following additional third-party webpage evidence:

- A page from the website of Wine Enthusiast magazine reviews a wine that includes “amber” in its name (“Dila-O Dry **Amber Wine**”).⁶

- A page from the website of Potomac Wines & Spirits offers a “Mixed Georgian **Amber Wine Sampler**.”⁷

- A page from the website of Langhart & Hill discussing its wines, including its “skin-fermented white wines, which it explains are “also called ‘**amber wines**,’”

² 6 TTABVUE 2 (Examining Attorney’s Brief).

³ *Id.* at 3.

⁴ February 5, 2021 application, TSDR 1.

⁵ May 23, 2023 final Office action, TSDR 4-9.

⁶ *Id.* at 17.

⁷ *Id.* at 18.

‘orange wines,’ or ‘vini macerate,’” and refers to that wine, image below, as “our **amber wine.**”



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○ A page from the website of Stonewall Creek Vineyards, offers the vineyard’s “first vintage of ‘**amber wine**’ made from estate grown Petit Menseng grapes” that are “skin-fermented like a red wine.”⁹



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⁸ *Id.* at 20.

⁹ *Id.* at 21.

¹⁰ *Id.*

○ An article from Food & Wine refers to the same style of wine making as in the above article and suggests that “if you enjoy these wines, you have to hunt them down via various codewords: skin contact, **amber wine**, and skin-fermented white wine, or foreign language terms...”¹¹ It also explains that “[t]he term orange wine has gained in popularity because it is a simply way to refer to the **darker amber** or orange hue of the wines.”



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○ An article from Master Class titled “Guide to Orange Wine: Learn What Makes Orange Wine Unique” explains that orange wine is “also known as **amber wine** or skin-contact wine.”¹³

○ An article from the Seattle Times titled “Orange or ‘**amber**’ wines are coming on strong. Here are five to try” states that “[s]kin-fermented white wines, also called ‘orange’ or ‘**amber**’ wines, are a niche category that continues to grow in numbers and styles.”¹⁴

¹¹ *Id.* at 23.

¹² *Id.*

¹³ *Id.* at 25.

¹⁴ September 14, 2021 Office action, TSDR 4-5.

○ An article from Our Everyday Life titled “Types of **Amber Wine**” states that “Amber wine is made from stalkless black greats. ... **Amber wine** is also called blush or rose wine for its distinctive pink color. ... **Amber wine** ranges in taste from dry to medium sweet.”¹⁵

○ An article from “The Australian Wine Research Institute” titled “Winemaking Treatment – **Amber Wine**” explains that “Amber or ‘orange’ wines are made from white grapes using techniques traditionally used for red winemaking” which “involves fermentation on the skins, seeds and sometimes stems....” The article cautions against using the term “orange wine,” which “could be misconstrued as a wine made in the GI region of Orange or even a fruit wine fermented with oranges. Some producers have thus begun using ‘**amber wine**’ as an alternative description.”¹⁶

○ A webpage from the website of Troon Vineyard offers a “2019 Kubli Bench Amber, Estate Orange Wine.” According to the article, “[w]hile popularly called orange wines these days, we call wines we make in this style amber wines, as that is what they’re called in the Republic of Georgia, where they have been made for thousands of years.”¹⁷

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 9.



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The Examining Attorney also made of record:

- a January 23, 2019 article titled “How Many People Speak Greek, and Where Is It Spoken?” which estimates that in Greece has “around 10.7 million people” that speak Greek, “which is almost the entirety of the country”; “[t]he United States has around 365,000 Greek speakers, reflecting waves of immigration in the 19th and 20th centuries”; and Cypress “has about 1,168,500 Greek speakers”; and “Australia has 252,000 Greek speakers”;¹⁹

- a list of the “Top Language Other than English Spoken in 1980 and Changes in Relative Rank, 1990-2010” from the U.S. Census Bureau, which indicates that the number of people in the United States who spoke Greek was 404,443 in 1980; 388,260 in 1990; 365,436 in 2000; and 307,178 in 2010;²⁰ and

- a European Union website printout indicating that Greek is an “official EU

¹⁸ *Id.*

¹⁹ May 23, 2022 Office action response, TSDR 10-12.

²⁰ *Id.* at 14.

language since,” and has been so since 1981;”²¹

The Examining Attorney also cites the Board’s decision in *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100 (TTAB 2018) as support for its position that Greek is a common, modern language that would be understood by an appreciable number of persons in the United States. In *Malhotra*, the examining attorney had argued that the terms GÁMOS and ΓΑΜΟΣ translated and transliterated (respectively) from Greek to English as “marriage,” “matrimony,” or “wedding,” but “did not introduce evidence to demonstrate that Greek is a ‘common language’ in the United States.” *Malholtra*, 128 USPQ2d at 1103. Nevertheless, the Board took judicial notice of a report “released by the U.S. Census Bureau in October 2015” titled “Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for the United States: 2009-2013,” “which states that 304,932 U.S. residents age five and over speak Greek at home.” *Id.* Based on that information, the Board found that “Greek is a common, modern language, not one that is dead or obscure.” *Id.* at 1103 and n.5.

Applicant, notwithstanding the evidence discussed above, and the fact that Applicant (a Greek company) voluntarily provided an English translation of KECHRIBARI as “amber” in the application it filed, argues that the Examining Attorney provided no evidence that “in support of the proposition that Greek is a ‘common, modern language’ pursuant to TMEP [TRADEMARK MANUAL OF EXAMINING PROCEDURE §] 1207.01(b)(vi)(B)[.]”

²¹ *Id.* at 15-16

Applicant's argument is unavailing. The evidence listed above, including: Applicant's admission in the application itself that KECHRIBARI is a foreign term that translates into English as "amber"; the blogs referring to KECHRIBARI wines observing that the KECHRIBARI translates from Greek to English as "amber"; the data provided by the Examining Attorney showing that Greek ranks among the top languages spoken in the U.S. other than English (as several hundred thousands of U.S. residents between 1980 and 2010 spoke Greek, leaves us with no doubt that Greek is a common, modern language.²²

Applicant also argues that "while the Board took judicial notice of the Census bureau data cited above, it performed no analysis of the applicability of that data. As such, the [Board's] conclusion that Greek is considered a 'common, modern language' in the United States appears to made as dicta." In contrast," Applicant asserts, "a more rigorous analysis of the Census Bureau data leads to a different position." Specifically, asserts, Applicant:

Given that the current United States population is approximately 330 million people, Greek speakers in the United States constitute less than one-tenth of one percent (0.092 percent) of the total U.S. population. This is a vanishingly small, nearly imperceptible portion of the overall U.S. population. As such, it is clear mathematical evidence that Greek should not be considered to be a common language in the United

²² To the extent that Applicant, by using the term "pursuant to" TMEP § 1207.01(b)(vi)(B)" is referring to that TMEP section's suggestion that that, "if available, the examining attorney should provide evidence of the percentage or number of United States consumers who speak the language in question," Applicant's argument remains unavailing. As noted above, the Examining attorney did provide (via the U.S. Census Bureau Report, "Top Language Other than English Spoken in 1980 and Changes in Relative Rank, 1990-2010") the number of U.S. residents that spoke Greek in the U.S. through 2010. That information, coupled with the other evidence referenced above, is sufficient to make our finding that Greek is a common, modern language.

States.²³

The Examining Attorney responds as follows:

Essentially, applicant makes a mathematical argument that the Greek language is not worthy of being considered a modern language, an argument that if adopted would rewrite the doctrine of foreign equivalents and eliminate all but a small handful of languages from consideration. The applicant does not indicate what number of speakers it would deem substantial enough to trigger the doctrine.

We agree with the Examining Attorney, and we reject Applicant's suggestion that balancing the percentage of speakers in the United States that speak Greek against the total population number of people in the United States, as a percentage, is the end-all be-all in determining whether a language is common and modern. Furthermore, we reject Applicant's contention that the Board's finding in *Malhotra* is dicta because the Board did not perform an analysis of the data provided in the discussed U.S. Census Bureau report. The Board's finding was not dicta, but rather an essential finding in its determination of descriptiveness in that case, which is precedential and binding on the Board. As noted above, we rely not only on that data, which was sufficient for the board in *Molhotra*, but also on:

- the Examining Attorney's U.S. Census Bureau evidence indicating that Greek was one of the "Top languages Other Than English" in 1980 (with 401,443 Greek speakers), and 30 years later, in 2010 (with 307,178 Greek speakers);²⁴
- the Examining Attorney's blog evidence providing reviews of Kechribari wine

²³ 4 TTABVUE 8-9 (Applicant's Brief).

²⁴ May 23, 2022 final Office action, TSDR 14.

and noting that “Kechribari” is Greek for “amber,”²⁵ and, perhaps most importantly;

- Applicant’s admission that KECHRIBARI translates into English as “amber.”²⁶

Applicant further argues: “Given the considerable differences in sound and appearance between the Applicant’s KECHRIBARI mark and the equivalent term “amber,” there is no evidence of record in support of the proposition that the relevant consumers would thereby “stop and translate” the Applicant’s mark to its English language equivalent.”²⁷ However, in cases where the Board has found the language of the foreign mark is a common, modern language, as we have found here, the Board usually finds it to be the norm that that the relevant consumer would stop and translate the foreign term at issue, and similarity of sight and sound are not required to do so. Indeed, this case is similar to those like *In re Thomas*, 79 USPQ2d 1021 (TTAB 2006), in which we found that relevant consumers would “stop and translate” the foreign term. *Id.* at 1025 (finding that consumers would stop and translate not only because “MARCHE NOIR is the exact translation of ‘black market,’” but also because of the “inherent nature” of the mark); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) (doctrine applied because “la peregrina” and “the pilgrim” are “equivalent in meaning,” and “the translated meaning of LA PEREGRINA is not obscure”).

We acknowledge that exceptions to this norm have arisen from time to time in

²⁵ *Id.* at 4-9.

²⁶ February 5, 2021 application, TSDR 1.

²⁷ 4 TTABVUE 9 (Applicant’s Brief).

which relevant consumers would not “stop and translate” words from common, modern languages.²⁸ But those exceptions are inapplicable here, and there is no evidence that KECHRIBARI is so commonly used among English speakers, like CORDON BLEU, that translation becomes unnecessary.

We find that the Examining Attorney properly applied the doctrine of foreign equivalents to Applicant’s mark KECHRIBARI, which translates into English as “amber,” and that the relevant consumer would stop and translate it into English.

Applicant argues that “[e]ven if the doctrine of foreign equivalents is deemed applicable here, and Applicant’s KECHRIBARI mark is considered to be equivalent to the English language word “amber,” the mark cannot be considered as merely descriptive of the Applicant’s goods,”²⁹ and further, that there are “[m]any cases” that support its position. The Examining Attorney argues in response that the cases Applicant cites consist of “examples of case law consisting of a single compound term were [sic] found to be suggestive rather than descriptive,” and “none of those cases are analogous to the facts of the present applicant [sic], which features a single word mark which translates to a common industry term denoting a known category of goods.”³⁰

²⁸ For example, in *Cont’l Nut Co. v. Cordon Bleu*, 494 F.2d 1397, 181 USPQ 647 (CCPA 1974), the French term CORDON BLEU had such a well-established meaning that even French speakers would not translate it to “blue ribbon.” *Id.*, cited in *Spirits Int’l*, 90 USPQ2d at 1492. Similarly, in *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1975), the Board deemed confusion unlikely between AUNT MARY’S for canned fruits and vegetables and TIA MARIA, as the Spanish term named a particular person in the context of restaurant services. *Id.* at 525-26.

²⁹ 4 TTABVUE 10 (Applicant’s Brief).

³⁰ 6 TTABVUE 5 (Examining Attorney’s Brief).

We agree with the Examining Attorney that the cases cited by Applicant are not on point, and mostly concern marks consisting of more than one word. As is often noted by the Board and the courts, each case must be decided on its own merits and we are not bound by decisions in matters involving different marks and different evidentiary records. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *see also In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); *In re Wilson*, 57 USPQ2d 1863, 1871 (2001).

Applicant also suggests that the word “amber” is not merely descriptive of wines because it does not ““forthwith” describe an ingredient, quality, characteristic, function, feature, purpose, or use of its wine, and here it does not.”³¹ Applicant elaborates:

The Examining Attorney has relied upon online evidence in support of the proposition that the term “amber” denotes a discrete and particular type of wine. This evidence offered by the Examining Attorney, however, appears to be equivocal on this proposition. For example, the evidence offered [includes]... a screenshot from the Seattle Times alternately referring to the class of skin-fermented white wines as “orange” or “amber” wines[,] [as well as a] screenshot from the Australian Wine Research Institute with a similarly ambiguous reference to “orange” or “amber” wines. The ambiguity is further supported by the Wikipedia entry for “orange wine” (notably, there is no Wikipedia entry for “amber wine”), which states that amber wine is also known as orange wine, skin-contact white wine, or skin-fermented white wine.³²

This argument is unavailing. In the context of a descriptiveness analysis, the question is whether the mark is merely descriptive of the identified goods or services. We thus look to the definition of the word which is most relevant to the goods and

³¹ *Id.* at 11-12.

³² *Id.* at 12 (citations omitted).

services:

[T]he issue of descriptiveness is determined in relation to the services identified in the application. The fact that [a term] has multiple meanings, some of which are not descriptive, is not controlling or relevant to the descriptiveness analysis. **So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.**

In re IP Carrier Consulting Grp., 84 USPQ2d 1028, 1034 (TTAB 2007) (emphasis added). See also *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) (“[S]o long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.”); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979) (“[S]ince the question of descriptiveness must be determined in relation to the goods or services for which registration is sought, the fact that a term may have meanings other than the one the Board is concerned with is not controlling on the question.”).

The word “amber” is defined by the MERRIAM-WEBSTER DICTIONARY as “a variable color averaging a dark orange yellow” (noun) and “consisting of amber” and “resembling amber,” “*especially*: having the color amber” (adjective).³³ Based on the evidence presented, we find that the Examining Attorney has established that “amber” is both the name for a type of wine and reflects a quality or characteristic of wine, namely its color or hue.

³³ <https://www.merriam-webster.com/dictionary/amber> (accessed July 31, 2023). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions, *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006), and we do so here.

B. Conclusion

We find that Applicant's mark KECHRIBARI is merely descriptive of "wines" because it immediately conveys to consumers that the wines are of a particular type (amber wine) or color/hue (amber). It is therefore not registrable on the Principal Register without a showing of acquired distinctiveness.

Decision: The refusal under Section 2(e)(1) is affirmed.